

REFERENCE TITLE: domestic violence; definition

State of Arizona
Senate
Forty-eighth Legislature
Second Regular Session
2008

SB 1386

Introduced by
Senator Gray L

AN ACT

AMENDING SECTION 13-3601, ARIZONA REVISED STATUTES; RELATING TO DOMESTIC VIOLENCE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 13-3601, Arizona Revised Statutes, is amended to
3 read:

4 13-3601. Domestic violence: definition; classification;
5 sentencing option; arrest and procedure for
6 violation; weapon seizure; notice

7 A. "Domestic violence" means any act which is a dangerous crime
8 against children as defined in section 13-604.01 or an offense defined in
9 section 13-1201 through 13-1204, 13-1302 through 13-1304, 13-1502 through
10 13-1504 or 13-1602, section 13-2810, section 13-2904, subsection A, paragraph
11 1, 2, 3 or 6, section 13-2916 or section 13-2921, 13-2921.01, 13-2923,
12 13-3019, 13-3601.02 or 13-3623, if any of the following applies:

13 1. The relationship between the victim and the defendant is one of
14 marriage or former marriage or of persons residing or having resided in the
15 same household. THIS PARAGRAPH DOES NOT APPLY TO PERSONS WHO RESIDE OR HAVE
16 RESIDED IN THE SAME HOUSEHOLD IF THE RELATIONSHIP BETWEEN THE VICTIM AND THE
17 DEFENDANT IS NOT CURRENTLY OR WAS NOT PREVIOUSLY A ROMANTIC OR SEXUAL
18 RELATIONSHIP AND THE VICTIM AND THE DEFENDANT ONLY RESIDE OR RESIDED IN THE
19 SAME HOUSEHOLD AS ROOMMATES FOR THE PURPOSE OF SHARED HOUSING OR EXPENSES.

20 2. The victim and the defendant have a child in common.

21 3. The victim or the defendant is pregnant by the other party.

22 4. The victim is related to the defendant or the defendant's spouse by
23 blood or court order as a parent, grandparent, child, grandchild, brother or
24 sister or by marriage as a parent-in-law, grandparent-in-law, stepparent,
25 step-grandparent, stepchild, step-grandchild, brother-in-law or
26 sister-in-law.

27 5. The victim is a child who resides or has resided in the same
28 household as the defendant and is related by blood to a former spouse of the
29 defendant or to a person who resides or who has resided in the same household
30 as the defendant.

31 B. A peace officer ~~may~~, with or without a warrant, ~~MAY~~ arrest a person
32 if the officer has probable cause to believe that domestic violence has been
33 committed and the officer has probable cause to believe that the person to be
34 arrested has committed the offense, whether ~~such~~ THE offense is a felony or a
35 misdemeanor and whether ~~such~~ THE offense was committed within or without the
36 presence of the peace officer. In cases of domestic violence involving the
37 infliction of physical injury or involving the discharge, use or threatening
38 exhibition of a deadly weapon or dangerous instrument, the peace officer
39 shall arrest a person, with or without a warrant, if the officer has probable
40 cause to believe that the offense has been committed and the officer has
41 probable cause to believe that the person to be arrested has committed the
42 offense, whether ~~such~~ THE offense was committed within or without the
43 presence of the peace officer, unless the officer has reasonable grounds to
44 believe that the circumstances at the time are such that the victim will be
45 protected from further injury. Failure to make an arrest does not give rise

1 to civil liability except pursuant to section 12-820.02. In order to arrest
2 both parties, the peace officer shall have probable cause to believe that
3 both parties independently have committed an act of domestic violence. An
4 act of self-defense that is justified under chapter 4 of this title is not
5 deemed to be an act of domestic violence. The release procedures available
6 under section 13-3883, subsection A, paragraph 4 and section 13-3903 are not
7 applicable to arrests made pursuant to this subsection.

8 C. A peace officer may question the persons who are present to
9 determine if a firearm is present on the premises. On learning or observing
10 that a firearm is present on the premises, the peace officer may temporarily
11 seize the firearm if the firearm is in plain view or was found pursuant to a
12 consent to search and if the officer reasonably believes that the firearm
13 would expose the victim or another person in the household to a risk of
14 serious bodily injury or death. A firearm that is owned or possessed by the
15 victim shall not be seized unless there is probable cause to believe that
16 both parties independently have committed an act of domestic violence.

17 D. If a firearm is seized pursuant to subsection C of this section,
18 the peace officer shall give the owner or possessor of the firearm a receipt
19 for each seized firearm. The receipt shall indicate the identification or
20 serial number or other identifying characteristic of each seized firearm.
21 Each seized firearm shall be held for at least seventy-two hours by the law
22 enforcement agency that seized the firearm.

23 E. If a firearm is seized pursuant to subsection C of this section,
24 the victim shall be notified by a peace officer before the firearm is
25 released from temporary custody.

26 F. If there is reasonable cause to believe that returning a firearm to
27 the owner or possessor may endanger the victim, the person who reported the
28 assault or threat or another person in the household, the prosecutor shall
29 file a notice of intent to retain the firearm in the appropriate superior,
30 justice or municipal court. The prosecutor shall serve notice on the owner
31 or possessor of the firearm by certified mail. The notice shall state that
32 the firearm will be retained for not more than six months following the date
33 of seizure. On receipt of the notice, the owner or possessor may request a
34 hearing for the return of the firearm, to dispute the grounds for seizure or
35 to request an earlier return date. The court shall hold the hearing within
36 ten days after receiving the owner's or possessor's request for a hearing.
37 At the hearing, unless the court determines that the return of the firearm
38 may endanger the victim, the person who reported the assault or threat or
39 another person in the household, the court shall order the return of the
40 firearm to the owner or possessor.

41 G. A peace officer is not liable for any act or omission in the good
42 faith exercise of the officer's duties under subsections C, D, E and F of
43 this section.

44 H. Each indictment, information, complaint, summons or warrant that is
45 issued and that involves domestic violence shall state that the offense

1 involved domestic violence and shall be designated by the letters DV. A
2 domestic violence charge shall not be dismissed or a domestic violence
3 conviction shall not be set aside for failure to comply with this subsection.

4 I. A person who is arrested pursuant to subsection B of this section
5 may be released from custody in accordance with the Arizona rules of criminal
6 procedure or any other applicable statute. Any order for release, with or
7 without an appearance bond, shall include pretrial release conditions that
8 are necessary to provide for the protection of the alleged victim and other
9 specifically designated persons and may provide for additional conditions
10 that the court deems appropriate, including participation in any counseling
11 programs available to the defendant.

12 J. When a peace officer responds to a call alleging that domestic
13 violence has been or may be committed, the officer shall inform in writing
14 any alleged or potential victim of the procedures and resources available for
15 the protection of ~~such THE~~ victim, including:

16 1. An order of protection pursuant to section 13-3602, an injunction
17 pursuant to section 25-315 and an injunction against harassment pursuant to
18 section 12-1809.

19 2. The emergency telephone number for the local police agency.
20 3. Telephone numbers for emergency services in the local community.

21 K. A peace officer is not civilly liable for noncompliance with
22 subsection J of this section.

23 L. An offense that is included in domestic violence carries the
24 classification prescribed in the section of this title in which the offense
25 is classified. If the defendant committed a felony offense listed in
26 subsection A of this section against a pregnant victim and knew that the
27 victim was pregnant or if the defendant committed a felony offense causing
28 physical injury to a pregnant victim and knew that the victim was pregnant,
29 the maximum sentence otherwise authorized shall be increased by up to two
30 years.

31 M. If the defendant is found guilty of a first offense included in
32 domestic violence, the court shall provide the following written notice to
33 the defendant:

34 You have been convicted of an offense included in domestic
35 violence. You are now on notice that:

36 1. If you are convicted of a second offense included in
37 domestic violence, you may be placed on supervised probation and
38 may be incarcerated as a condition of probation.

39 2. A third or subsequent charge may be filed as a felony
40 and a conviction for that offense shall result in a term of
41 incarceration.

42 N. The failure or inability of the court to provide the notice
43 required under subsection M of this section does not preclude the use of the
44 prior convictions for any purpose otherwise permitted.